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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,082	06/27/2000	Steven M. Bessette	45112-089	4329

7590 11/08/2002

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EXAMINER

AFREMOVA, VERA

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 11/08/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/604,082

Applicant's

Bessette et al.

Examiner

Vera Afremova

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Oct 22, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Oct 22, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached

3. Applicant's reply has overcome the following rejection(s):

4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached

6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: none

Claim(s) rejected: 1, 3-5, 7, 8, and 10-45

Claim(s) withdrawn from consideration: none

8. The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. Other: _____

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Attachment to Advisory Action

The amendment filed 10/22/2002 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because the proposed amendment raises new issues that would require further consideration and/or search with regard to new limitations such as "knockdown and kill" household pests, for example. The proposed amendment broadens the scope of the claimed invention to include control over any household pest besides cockroaches and ants. The proposed amendment broadens the scope of the claimed invention by incorporating more than one of carrier admixtures into a pesticidal composition, for example: see claim 7. The proposed amendment broadens the scope of the claimed invention by designating various functions to the same compounds such as benzyl alcohol being both an "essential oil" and "carrier", for example: see claims 7 and 13. The issues of new matter might also exist in the newly proposed combination of plant oils, plant essential oils, compounds or derivatives of plant oils and carriers with respect to the newly suggested claims 46-49 in particular. Thus, the proposed amendment is not deemed to place the application in better form for appeal by materially simplifying the issues for appeal.

Applicants' arguments filed 10/22/2002 have been fully considered but they are not found persuasive. With regard to the cited patents WO 95/07024 [N] or WO 98/30124 [IDS-3] applicants argue that the compositions of these patents do not comprises all or some components (response page 8). However, the claimed invention is not necessarily limited to incorporation of

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all compounds but rather to addition of one more component to the rosemary oil component.

With regard to the claim rejection under 35 U.S.C. 103(a) applicants argue that

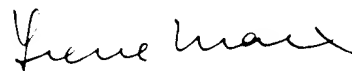
In response to applicant's argument that the cited prior art references is nonanalogous art (response pages 12, last par.), it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all cited references relate to the problem of controlling various insects including household pests, and, thus, they are considered to be pertinent to the particular problem within the scope of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (703) 308-9351. The examiner can normally be reached on Monday to Friday from 9:00 to 5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for this Group is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vera Afremova

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November 4, 2002.


IRENE MARY
PRIMARY EXAMINER